IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11851 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATKUMAR GULABRI KOTAK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11851 of 2003

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent Nos. 1-2

NOTICE NOT RECD BACK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 30/06/2004

ORAL JUDGEMENT

This Court has already issued rule in this

petition vide order dated 17-06-2004 and notice as to interim relief was made returnable on today i.e. 30-06-2004. In the said order dated 17-06-2004 it was stated that on the returnable date the Court may take up the matter for final disposal. Under this circumstance and with the consent of the parties, the matter is taken up for final hearing today.

2. In the present petition, moved under Article 226 of the Constitution of India, the petitioner has challenged the order passed by the State of Gujarat i.e. Dy. Secretary, Revenue Department dated 24-12-2002 dismissing application submitted by the petitioner for deleting the land in question from the list of excess vacant land maintained by the State Government and to make necessary correction / amendment in the Floppy.

3. The original land owner, Jaykant Lalitchandra Vyas, filed a statement in Form No.1 as required under Section 6 of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as 'the Act'). The competent authority and Dy. Collector, Rajkot vide its order dated 03-07-1992 declared 5135 sq. mtrs. of land as excess vacant land after giving four units and declared the Survey No.576 paiki as excess vacant land. It seems that before the actual possession of the land bearing Survey No.576 admeasuring 5135 sq. mtrs. is taken over the original land owner preferred an appeal before the Gujarat Urban Land Ceiling Tribunal (for short 'the Tribunal) under Section 33 of the Act. The Tribunal vide its judgment and order dated 29-08-1992 allowed the Appeal No.15 of 1992 partly and held that the deponent was entitled one additional three units i.e. in all they were entitled to seven units and entitled to retain 10500 sq. mtrs. of land and only 1135 sq. mtrs. of land was required to be land as excess vacant land. Accordingly, on the basis of the judgment and order passed by the Tribunal dated 29-08-1992 passed in Appeal No.15 of 1992 competent authority and Dy. Collector, Rajkot vide its order dated 21-01-1993 passed a final order declaring 1135 sq. mtrs. as excess vacant land from the land bearing Survey No.576. It seems that the order passed by the competent authority and Dy. Collector, Rajkot dated 21-01-1993 was also taken under suo motu review by the State Government by exercising power under Section 34 of the Act and by order dated 19-01-1999 the State Government had also confirmed the order passed by the competent authority and Dy. Collector, Rajkot dated 21-01-1993 in declaring only 1135 sq. mtrs. of land as excess vacant land. It is the contention of the petitioner that in spite of the fact that only 1135 sq. mtrs. of land of Survey No.576 was declared as excess

vacant land in the statement of land, possession is taken over by the State Government as excess vacant land the entry is made with regard to the land admeasuring 5135 sq. mtrs. of land as excess vacant land from the land bearing Survey No.576 and, therefore, they have moved an application before the State Government for deleting from the said statement of the land of which possession is taken by the State Government. However, without considering the order passed by the competent authority and Dy. Collector, Rajkot dated 21-01-1993 and also the order passed by the State Government dated 19-01-1999 in a proceedings under Section 34 of the Act, the State Government vide its communication / order dated 24-12-2002 rejected the application submitted by the petitioner for deleting the aforesaid land bearing Survey No.576 of Rajkot from the statement / list maintained by the State Government showing the land as excess vacant land and possession was taken over on the ground that the possession of the land in question has already been taken over by the competent authority on 09-09-1991.

4. Being aggrieved and dissatisfied with the communication / order dated 24-12-2002 passed by the State Government rejecting the application of the petitioner for deleting the land bearing Survey No.576 from the entry in the statement of the land of which the possession was taken by the State Government as excess vacant land, the present petition is moved under Articles 226 and 227 of the Constitution of India.

5. Mr.S.M.Shah, learned advocate appearing on behalf of the petitioner, has vehemently submitted that apart from the fact that before passing the impugned communication / order dated 24-12-2002, the petitioner had not been given an opportunity of hearing. Even the finding of the State Government in its communication / order dated 24-12-2002 to the effect that the possession of the land in question has been taken over by the competent authority on 09-09-1991 is factually incorrect. Mr.Shah has submitted that in fact in the order dated 21-01-1993 the competent authority itself has submitted that before the actual possession of the land which was declared as excess vacant land pursuant to the order passed by the competent authority dated 03-07-1992 is taken over the petitioner has preferred an appeal before the Tribunal under Section 33 and thereafter by judgment and order dated 29-08-1992 passed in Appeal No.15 of 1992 the Tribunal has declared only 1135 sq. mtrs. of land as excess vacant land. Mr.Shah has also submitted that on the basis of the order passed by the Tribunal dated 29-08-1992 a consequential and final order has also been

passed by the competent authority on 21-01-1993 declaring 1135 sq. mtrs. of land as excess vacant land from the land bearing Survey No.576. He also submitted that the said order was confirmed by the State Government by exercising the powers under Section 34 of the Act vide order dated 19-01-1999. Under the circumstances, Mr.Shah submitted that the impugned communication / order dated 24-12-2002 passed by the State Government requires to be quashed and set aside.

6. Heard the learned advocates for the respective parties.

7. The competent authority initially passed an order on 03-07-1992 declaring 5135 sq. mtrs. of land as excess vacant land from the land bearing Survey No.576 situated in Rajkot and allowing only four units. Before the actual possession is taken over by the competent authority the original land owner preferred an appeal before the Tribunal under Section 33 of the act which came to be partly allowed by judgement and order dated 29-08-1992 passed in Appeal No.15 of 1992 and only 1135 sq. mtrs. of land came to be treated as excess vacant land. On the basis of the judgment and order passed by the Tribunal a further consequential and final order also came to be passed by the competent authority and Dy. Collector, Rajkot dated 21-01-1993 declaring only 1135 sq. mtrs. of land as excess vacant land. The said order was also confirmed by the State Government by exercising powers under Section 34 of the Act vide order dated 19-01-1998. Under the circumstances, the State Government was not justified in continuing the land bearing Survey No.576 admeasuring 5135 sq. mtrs. of land in the list of the land of which the possession is taken over as an excess surplus vacant land. It seems that while passing the communication / order dated 24-12-2002 the State Government has not properly considered the order passed by the Tribunal and/or the order passed by the competent authority dated 21-01-1993 when the appeal came to be allowed and only 1135 sq. mtrs. of land is declared as excess vacant land. The authorities are bound to give respect to the said order as the said order has become final. Under the circumstances, the order / communication dated 24-12-2002 rejecting the application of the petitioner for deleting the land bearing Survey No.576 of Rajkot from the list / entry maintained by the State Government of which possession is taken over by the State Government as excess surplus vacant land, is required to be quashed and set aside and the same is hereby quashed and set aside.

8. Accordingly, the petition succeeds. The respondents are directed to delete the land bearing Survey No.576 of Rajkot from the list / entry maintained by the State Government of which the possession of the land is taken over by the State Government.

9. Rule is made absolute to the aforesaid extent. No order as to costs.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'